

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MONICA E PINO AND MANUEL CUBIAS,

Index No.: 21CV5314

Plaintiff,

COMPLAINT

-against-

UNITED STATES OF AMERICA,

Defendant.

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Plaintiff, by his attorneys, MALLILO & GROSSMAN, complaining of the defendant herein,  
respectfully allege as follows:

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF MONICA E  
PINO

1. That at all times hereinafter mentioned, the plaintiff MONICA E PINO was and still is a resident of the County of Queens, City and State of New York.
2. That at all times hereinafter mentioned, the plaintiff MANUEL CUBIAS was and still is a resident of the County of Queens, City and State of New York.
3. Upon information and belief, and at all times hereinafter mentioned, the defendant, UNITED STATES OF AMERICA, was and still is a municipal corporation duly organized and existing under the laws of the State of New York, within the State of New York.
4. Upon information and belief, the United States of America is the federal government, who is the proper defendant, pursuant to 28 U.S.C. § 2679(b)(1), for claims for money damages arising from or out of a negligent or wrongful act and/or omission of any federal employee

committed within the course and scope of their employment.

5. Jurisdiction is based upon 28 U.S.C. §1346 and 28 U.S.C. §1391(e)(1).

6. Upon information and belief that at all times hereinafter mentioned, a certain motor vehicle bearing registration number JPW4977, 2016 HONDA was owned by the plaintiff, MONICA E. PINO.

7. Upon information and belief that at all times hereinafter mentioned, a certain motor vehicle bearing registration number JPW4977, 2016 HONDA was operated by the plaintiff, MONICA E. PINO.

8. Upon information and belief that at all times hereinafter mentioned, a certain motor vehicle a UNITED STATES POSTAL SERVICE TRUCK # 7531304 was owned by the defendant, UNITED STATES OF AMERICA.

8. Upon information and belief that at all times hereinafter mentioned, a certain motor vehicle a UNITED STATES POSTAL SERVICE TRUCK #7531304 was owned by the defendant, UNITED STATES POSTAL SERVICE.

9. Upon information and belief that at all times hereinafter mentioned, a certain motor vehicle a UNITED STATES POSTAL SERVICES TRUCK #7531304 was operated by JOHN DOE.

10. Upon information and belief, on December 15, 2020, John Doe was acting within the course and scope of his employment.

11. That on or about February 22, 2021 and within ninety (90) days after the claim herein arose, the plaintiff duly served upon, presented and filed with the defendant, UNITED STATES OF AMERICA, specifically the United States Postal Service a Notice of Claim Form 95, in writing sworn to by the plaintiff.

12. That more than thirty (30) days have elapsed since the presentation of such claim as aforesaid.

13. Upon information and belief, that at all times hereinafter mentioned, Francis Lewis Boulevard and 37<sup>th</sup> Avenue., were and still are public thoroughfares located in the County of QUEENS, City and State of New York.

14. On December 15, 2020 as the plaintiff was lawfully and properly operating a 2016 Honda, Plate # JPW4977, New York, she was struck by the vehicle owned by the United States of America and/or US Postal Service.

15. That said contact took place on Francis Lewis Boulevard and 37<sup>th</sup> Avenue. in the County of QUEENS, State of New York.

16. The aforesaid accident occurred without any fault or negligence on the part of the plaintiff contributing thereto and was caused solely and wholly by the defendant's negligence.

17. That JOHN DOE had a duty to operate, maintain, manage and/or control his motor vehicle, and failed to give due and proper warning of the movements of his motor vehicle in order to avoid the accident; operated his motor vehicle at an excessive rate of speed; failed to keep a proper lookout upon the highway; failed to yield the right of way; failed to turn left when it was safe to do so; and in so operating his motor vehicle as to allow it to come into contact with a motor vehicle of the plaintiff, in violation of the applicable statutes, ordinances and regulations.

18. That as a result of the foregoing, the plaintiff was caused to sustain serious personal injuries.

19. That as a result of the foregoing, the plaintiff was caused to suffer a "serious injury" as that term is defined in Subdivision 4 of Section 5102 of the Insurance Law of the State of New

York, and being a covered person and claiming against a covered person, is entitled to recover for noneconomic loss, including pain, suffering and disfigurement, and is entitled to recover for such economic loss as exceeds basic economics.

20. That by reason of the negligent, wrongful acts and omissions on the part of the defendant as aforesaid, the plaintiff has suffered and will continue to suffer pain and agony, and was unable to attend to his duties, all to his damage in the sum to be determined at the time of trial.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF  
MANUEL CUBIAS

21. That this plaintiff repeats and reiterates each and every allegation in the first cause of action.

22. On December 15, 2020 as the plaintiff was lawfully and properly a passenger in a 2016 Honda. Plate #JPW4977, New York, owned and operated by MONICA E. PINO, he was struck by the vehicle owned by the United States of America and/or US Postal Service.

23. That as a result of the foregoing, the plaintiff was caused to sustain serious personal injuries.

24. That as a result of the foregoing, the plaintiff was caused to suffer a "serious injury" as that term is defined in Subdivision 4 of Section 5102 of the Insurance Law of the State of New York, and being a covered person and claiming against a covered person, is entitled to recover for noneconomic loss, including pain, suffering and disfigurement, and is entitled to recover for such economic loss as exceeds basic economics.

25. That by reason of the negligent, wrongful acts and omissions on the part of the defendant as aforesaid, the plaintiff has suffered and will continue to suffer pain and agony, and

was unable to attend to his duties, all to his damage in the sum to be determined at the time of trial.

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF  
MONICA E PINO

26. That this plaintiff repeats and reiterates each and every allegation in the previous causes of action.

27. That on 12/15/2020 the plaintiff's 2016 Honda, Plate # JPW4977, New York was Damaged.

28. That the plaintiff demands judgment in an amount which exceeds all lower courts that would otherwise have jurisdiction.

WHEREFORE, the plaintiff's demands judgment against the defendant in the first cause of action, and the plaintiff demands judgment in the second cause of action in an amount which exceeds all lower courts that would have jurisdiction, and the plaintiff demand judgment in the third cause of action in an amount which exceeds the jurisdiction of all lower courts in the sum to be determined at the time of trial, and plaintiff demands trial by a Jury, together with the costs and disbursements of this action.

Dated: Flushing, New York

9/14/2021



FRANCESCO POMARA JR ESQ (0807)

MALLILO & GROSSMAN

Attorney for Plaintiff(s)

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